

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6484 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

DHIRUBHAI KRUSHNASHANKAR BHATT

Versus

ADDITIONAL DIRECTOR MEDICAL SERVICES

Appearance:

1. Special Civil Application No. 6484 of 2001
MR NM KAPADIA for Petitioner
MS. REETA CHANDARANA, AGP, for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 15/09/2004

ORAL JUDGEMENT

In this petition, the petitioner has challenged the legality of the action of the respondents in not reimbursing partially the expenses incurred by the

petitioner for his by-pass surgery undergone by him on 25th February 2000.

2. The case of the petitioner is that he was working in the Government School and eventually he retired on 31st October 1998. On 17th February 2000, for heart ailment, the petitioner had to undergo angiography at Civil Hospital, Ahmedabad. The petitioner was then advised by-pass surgery and therefore to collect necessary funds the petitioner boarded the train from Ahmedabad to Valsad where his health deteriorated and he had to get down at Vadodara. He thereafter got admitted in Bhailal Amin Hospital and immediately he had to undergo by-pass surgery on 25th February 2000. It is the case of the petitioner that on account of emergency, he could not get prior approval of the Director. The petitioner had to bear expenses of Rs.77,357/- for the said surgery. The petitioner thereafter requested for reimbursement of the said expenses as per the Government circular, but his request was turned down by the Government by its letter dated 13th June 2000, wherein it is stated, inter alia that he is not entitled to reimbursement since he has taken treatment from a private hospital especially when the Government hospital is available in Vadodara. The petitioner made further representations which were also not accepted. The petitioner has also stated that as per circular dated 1.5.97, in case of by-pass surgery, the Government servants are entitled to reimbursement to the extent of Rs.70,000/- even when such treatment is taken from private hospitals. The petitioner has further stated that by a subsequent circular dated 26th March 1999, it is provided that the reimbursement will be made only if treatment is taken in Government approved hospitals, however, the said circular was never sent to the school of the petitioner and the petitioner did not know about the contents of the circular in question.

3. In the affidavit in reply filed by the respondent No.1, it is stated that the petitioner is not entitled to get reimbursement as the petitioner had no intention to take treatment as an emergency and that the case of the petitioner is a planned one. It is also stated that the fact that the petitioner could deposit an amount of Rs.1,10,000/- on 22nd February 2000 belies the contention of the petitioner that he was travelling to Valsad for raising funds. The affidavit of the respondent No.1 is, to say the least, not in good taste. To suggest that the petitioner had planned his surgery and the fact that he could raise the fund to meet the expenses of surgery and that he was not travelling to Valsad to raise fund is

neither correct nor proper. The petitioner had to be rushed to the hospital at Vadodara and obviously, if he had not arranged for money, his treatment would not have progressed. That by itself would not mean that the petitioner's contentions are incorrect. In any case, these are not the contentions which would decide the outcome of the petition. The main contention of the petitioner that the circular dated 26th March 1999 was not given sufficient publicity and had not come to the notice of the petitioner is nowhere denied. The result is that the petitioner who was aware about the contents of the circular dated 1.5.97 was led to believe that for by-pass surgery, he can take treatment from the hospital of his choice and reimbursement to the extent of Rs.70,000/- will be granted. In the subsequent circular, a condition of treatment to be taken only from the Government approved hospitals for seeking reimbursement was added. If this circular is not given sufficiently wide publicity, it would not be possible for the respondents to utilise the same against the petitioner to deny him reimbursement. In Vadodara when the petitioner suddenly required to take treatment and it was provided by the earlier circular that the expenses will be reimbursed to the tune of Rs.70,000/- even if the treatment is taken from any hospital and it was not known to the petitioner that unless he goes to the Government approved hospital, reimbursement will not be granted. For this reason I find that stand of the respondents is patently illegal and unlawful. It is not the case of the respondents that the petitioner has not undergone any surgery or that the claim is bogus. It is nowhere disputed or denied that the petitioner did undergo the by-pass surgery and he did incur expenditure of more than Rs.77,000/-. In that view of the matter and in view of my conclusion that the subsequent circular dated 26th March, 1999 was never given sufficiently wide publicity so as to utilise the same to deny the petitioner the benefit of reimbursement, I find that the action of the respondent is illegal and unlawful and required to be quashed and set aside.

4. Consequently, the order dated 13th June 2000 is set aside. The respondents are directed to reimburse to the petitioner an amount of Rs.70,000/- (Rupees seventy thousand only) as per the Government policy and in particular as found in the circular dated 1st May 1997 along with simple interest at the rate of 8 per cent from 22.5.2000, i.e. the date on which the petitioner had applied for the same till its actual payment. The same shall be done within a period of four weeks from the date of receipt of a copy of this order. Rule is made

absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)